



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170703617-8097-01]

RIN 0648-BG97

Atlantic Highly Migratory Species; Proposed Rule to Revise Atlantic Shark Fishery Closure Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to revise the current closure regulations for commercial shark fisheries. These changes would affect commercial shark fisheries in the Atlantic Ocean including the Gulf of Mexico and Caribbean. Proposed revisions include changes to the landings threshold that prompts a closure and the minimum time between filing of the closure with the *Federal Register* and the closure becoming effective. This action is necessary to allow more flexibility when closing shark fisheries and to facilitate the use of available quota while still preventing overharvests.

DATES: Written comments must be received [*insert date 30 days after date of publication in the Federal Register*], NMFS will hold an operator-assisted public hearing via conference call and webinar for this proposed rule on March 2, 2018, from 10 a.m. to

12 p.m. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0070, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0070, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, Chief, Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold one public hearing via conference call on this proposed rule. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents, including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and amendments are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Lauren Latchford at 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guý DuBeck, Gray Redding, or Karyl Brewster-Geisz by phone at 301-427-8503 or Delisse Ortiz at 240-681-9037.

SUPPLEMENTARY INFORMATION: Atlantic sharks are directly managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS published in the *Federal Register* (71 FR 59058, October 2, 2006) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This proposed rule considers modifying the current regulations related to closures for commercial shark fisheries.

Background

A brief summary of the background of this proposed action is provided below. Additional information regarding Atlantic HMS management, specifically the commercial fisheries season structure, can be found in the Draft EA for this proposed

action and the 2006 Consolidated HMS FMP and its amendments, found online at <http://www.nmfs.noaa.gov/sfa/hms/>.

NMFS initially required Federally-permitted dealers to report to NMFS every two weeks to effectively monitor quotas and close the shark fisheries when necessary to avoid exceeding the quotas. Because these reports were paper-based and had to be mailed, the data NMFS used to monitor the fisheries were often a month or more out of date.

As established in Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2), the Atlantic shark commercial fisheries season structure is managed with one fishing “season” that lasts the entire calendar year, beginning January 1 and closing on December 31, unless otherwise provided in an inseason action or other rule. NMFS closes a shark fishery when it calculates that the applicable overall, regional, and/or sub-regional landings for the species or management group has reached or is projected to reach 80 percent of the available applicable quota. Once closed, current regulations do not provide for re-opening the fishery.

When the 80-percent landings threshold was established in Amendment 2, all Federal shark dealers reported on a biweekly basis on paper reports. This 80-percent threshold was meant to account for the delay in data entry from the paper reports, landings that occurred during the five-day notice period, state water landings continuing to occur after a Federal closure, delayed landing reports from state only dealers, and the potential for late dealer reporting. However, since January 1, 2013 (77 FR 47303; August 8, 2012), all Atlantic HMS Federal dealers have been required to report commercial harvests of sharks, swordfish, and bigeye, albacore, yellowfin, and skipjack

(BAYS) tunas on a weekly basis through a NMFS-approved electronic dealer reporting system (eDealer). Most states also require all state-registered dealers to report electronically; however, there are some states that still allow for paper reports, and some states require reporting once a month rather than weekly. Overall, electronic dealer reporting has resulted in more timely data on landings.

Current regulations provide that any shark fishery closure is effective no less than five days from notice of filing with the Office of the *Federal Register*. This minimum notice period was established to allow fishermen to complete their trip and land a portion of the remaining quota. As a result of changes in Amendment 2, however, most shark fishermen now take one or two day trips and may not need the full five-day notice.

Since 2010, NMFS has received numerous comments at several HMS Advisory Panel (AP) meetings and during various rulemakings on commercial shark management requesting that NMFS modify the current 80-percent threshold.

At the September 2017 HMS Advisory Panel Meeting, some Panel members suggested that NMFS consider maintaining the existing 80-percent closure threshold as a precautionary approach; raising the threshold to 90 percent only in the Atlantic region and maintaining the 80-percent threshold in the Gulf of Mexico region; and determining closure thresholds for each region and/or management group based on the stock status and characteristics of the fishery. Additionally, some Panel members commented that immediate closure at any quota threshold is infeasible given that some state regulations provide more than 24 hours of notice before closing a fishery. Therefore, requesting immediate closure can cause confusion in fisheries that occur in both state and Federal

waters. Other Panel members suggested examining closure notice periods that are longer than five days.

As described above, both the 80-percent threshold and five-day notice requirement for commercial shark fisheries went into effect before electronic dealer reporting and before the impacts of Amendment 2 on fishing behavior, including trip lengths, were fully understood. This proposed rule considers modifying the five-day notice and 80-percent threshold with the goal of more fully utilizing available quota while also avoiding overharvests in these fisheries.

NMFS prepared a draft EA, RIR, and an IRFA, which present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. The complete list of alternatives and related analyses are provided in the draft EA/RIR/IRFA and are not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rulemaking is available from NMFS (see **ADDRESSES**).

NMFS considered six alternatives for the shark fishery-closure threshold and three alternatives for the shark fishery-closure notice period.

Alternative 1a, the No Action alternative, would maintain the 80-percent threshold for shark fishery closures. Alternative 1b would change the shark fishery-closure threshold to 90 percent of the available applicable overall, regional, and/or sub-regional quota. Alternative 1c would change the shark fishery-closure threshold to 70 percent of the available applicable overall, regional, and/or sub-regional quota.

Alternative 1d would increase the shark fishery-closure threshold to 90 percent in the

Atlantic Region, while maintaining the Gulf of Mexico closure threshold and overall non-regional threshold at 80 percent. Alternative 1e would establish objective criteria to evaluate whether a shark species and/or management group should be closed when the relevant landings reach, or are projected to reach, 80 percent of the available applicable overall, regional, and/or sub-regional quota, or allowed to remain open until 90 percent of the available applicable overall, regional, and/or sub-regional quota is reached. These criteria include: (A) The stock status of the relevant species or management group and any linked species and/or management groups; (B) The patterns of over- and underharvest in the fishery over the previous five years; (C) The likelihood of continued landings after the Federal closure of the fishery; (D) The effects of the closure on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; (E) The likelihood of landings exceeding the quota by December 31 of each year; and (F) The impacts of the closure on the catch rates of other shark management groups, including likelihood of an increase in dead discards. Under Alternative 1f, the preferred alternative, when NMFS calculates that landings have reached, or are projected to reach, 80 percent of the available applicable overall, regional, and/or sub-regional quota, NMFS will determine whether landings are projected to reach 100 percent of the relevant quota before the end of the fishing season (December 31). If so, NMFS will close the fishery through publication in the *Federal Register* with the appropriate notice. If not, the fishery will continue to remain open, and NMFS will update the public about the landings levels in its next monthly shark landings update listserv notice.

Alternative 2a, the No Action alternative, would maintain the five-day period between filing of the closure notice with the Office of the *Federal Register* and the closure going into effect. Alternative 2b, the preferred alternative, would change the minimum notice time between filing of the closure notice with the Office of the *Federal Register* and the closure going into effect to three days. Alternative 2c would allow immediate closure of a shark fishery upon filing of the closure notice with the Office of the *Federal Register*.

Alternative 1f, the preferred alternative, would provide additional flexibility to achieve full quota utilization while still preventing overharvest of the quota. This alternative would also provide the flexibility to account for differences in regional reporting when monitoring quotas and the ability to close in time to ensure the quota is not exceeded. For instance, regions that are more timely in their reporting and have few landings after Federal closures (*i.e.*, Atlantic region) could remain open for the remainder of the season while other regions (*i.e.*, Gulf of Mexico) that have landings after a Federal closure and/or delays in reported landings from state–water vessels may need to be closed. This alternative would likely have both neutral direct and indirect short- and long-term ecological impacts on the shark fishery because it would not be expected to have any impacts on the allowable level of fishing pressure, catch rates, or distribution of fishing effort otherwise authorized under actions that had assumed full utilization of the quota when analyzed. This alternative would allow increased quota utilization by keeping the fishery open as long as available quotas are not projected to be exceeded before the end of the season. This alternative could, therefore, lead to neutral

socioeconomic impacts, similar to Alternative 1a, the status quo alternative, if the fishery is projected to reach 100 percent before the end of the fishing season. If NMFS determined that a quota was not projected to reach 100 percent before the end of the fishing season, then the fishery would remain open under this alternative. Thus, in some scenarios, this alternative could lead to minor beneficial direct socioeconomic impacts since the quota could be fully utilized.

In combination with any of the notification alternatives (five-day notice, three-day notice, or immediate closure) NMFS expects Alternative 1f would have neutral direct and indirect short- and long-term ecological impacts to the shark fishery as shark quotas would remain unchanged, leaving the fishery to operate under the current conditions. This alternative would support full quota utilization while preventing overharvest of the quota. Given the flexibility and responsiveness this alternative would provide, combined with neutral ecological impacts to the fishery stocks, NMFS prefers this alternative at this time.

Under Alternative 2b, the preferred alternative, NMFS would change the minimum notice period to three days instead of the current five-day notice once landings reach a threshold necessitating a closure. According to the data presented in Amendment 2, historically, shark-fishing trips were up to nine days in length. In the directed shark fishery, recent observer reports show that most shark fishermen take trips of one or two days, and likely do not need the full five-day notice in order to land all sharks before the closure date is effective. As such, this alternative should not interfere with directed shark trips already underway at the time of closure, but may have impacts on pelagic longline

trips that may last several weeks. This alternative would allow more timely action in closing shark fisheries, helping to prevent overharvests.

Specifically, in combination with Alternative 1f, Alternative 2b would reduce the risk of exceeding the quota, especially if landings rates are high before the closure date is effective. This alternative would likely have both neutral direct and indirect short- and long-term ecological impacts to shark stocks because the allowable level of fishing pressure, catch rates, distribution of fishing effort, and commercial quotas would remain the same as otherwise authorized under actions that had assumed full utilization of the quota when analyzed. This alternative could potentially result in interrupted fishing activities for longer fishing trips, potentially resulting in regulatory discards and minor adverse socioeconomic impacts if trips were underway at the time of the notice of the closure. For instance, pelagic longline fishing vessels, which can take trips that last several weeks, may need to discard any dead sharks onboard and in their hold if the vessel is unable to land the sharks before the closure is effective. However, NMFS expects few dead discards and potential lost revenue as a result of closure notice timing as most pelagic longline fishermen do not target sharks and are unlikely to land many sharks given recent management measures to reduce shark mortality on pelagic longline vessels. Because this alternative would increase flexibility to close the fishery as needed while still preventing overharvest of the quota and allowing sufficient time for most fishermen to complete trips underway at the time of the notice of the closure, NMFS prefers this alternative at this time.

As described above, NMFS also considered five other alternatives regarding the threshold for closure (Alternatives 1a, 1b, 1c, 1d, and 1e) and two other alternatives regarding the timing for a closure notice (Alternatives 2a and 2c). At this time, NMFS does not prefer any of those alternatives. NMFS does not prefer Alternative 1a (No Action Alternative) because this alternative could continue to leave some of the shark quotas underutilized. NMFS does not prefer Alternative 1b or 1d because increasing the closure threshold to 90 percent in either all (1b) or part (1d) of the region would increase the potential for overharvest. NMFS does not prefer Alternative 1c because of the potential for underharvest in the shark fisheries. NMFS does not prefer Alternative 1e because the additional inseason action required to assess these criteria and carry out this alternative would unnecessarily complicate the closure procedures and possibly confuse the regulated community given past, relatively simple protocols for shark fishery closures. NMFS does not prefer Alternative 2a (No Action Alternative) because this alternative does not increase flexibility in NMFS' ability to manage the shark fisheries in a timely manner. NMFS does not prefer Alternative 2c (change the timing of shark fishery species and or management groups closures to allow for immediate closure upon filing of the closure notice with the *Federal Register*) as this alternative could result in interrupted fishing activities with little or no warning, potentially increasing regulatory discards if trips were underway at the time of the notice of the closure. Regarding Alternative 2c, at the HMS AP meeting in September 2017, NMFS received comments from the Panel members who indicated that immediate closure (Alternative 2c) is

infeasible given that most states provide more than 24 hours of notice before closing a fishery.

Public Hearing

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule through *[insert date 30 days after the date of publication in the Federal Register]*. During the comment period, NMFS will hold one conference call for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gray Redding at 301-427-8503, at least 7 days prior to the meeting.

Table 1. Date and Time of Upcoming Public Hearing Conference Call.

Venue	Date/time	Location contact information
Conference call	March 2, 2018, 10 a.m. – 12 p.m.	To participate in conference call, call: (888) 946-7204 Passcode: 1023240 To participate in webinar, RSVP at: https://noaaevents2.webex.com/noaaevent s2/onstage/g.php?MTID=e8805cc4b96307 b6f3ad888ac845a0e6f , A confirmation email with webinar log-in information will be sent after RSVP is registered.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can

provide comments. The NMFS representative will attempt to structure the meeting so that all the attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not they may be asked to leave the hearing or may not be allowed to speak during the conference call.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained below. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires Agencies to describe reasons why the action is being considered. The purpose of this proposed action is to consider modifications to the percent landings threshold to a level that allows fishermen to utilize the full quota while

avoiding under- and overharvest, and to determine a length of time between public notice and the effective date of a given fishery closure while avoiding under- and overharvest.

Section 603(b)(2) requires Agencies to describe the objectives of the proposed rule. NMFS has identified the following objectives, which are consistent with existing statutes such as the Magnuson-Stevens Act and its objectives, with regard to this proposed action:

- Maintaining optimum yield for all shark fishery species and/or management groups; and
- Establishing an appropriate length of public notice for a fishery closure.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under the SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the *Federal Register* (FR), which NMFS did on December 29, 2015 (80 FR 81194). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the

commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they all had average annual receipts of less than \$11 million for commercial fishing.

The proposed rule would apply to the approximately 496 commercial limited access permit holders in the Atlantic shark fishery (223 directed and 271 incidental permits) and 142 open access smoothhound shark permit holders, based on an analysis of permit holders as of October 2016. Not all permit holders are active in the shark fishery in any given year. Active directed permit holders are defined as those with valid permits that landed one shark, based on HMS electronic dealer reports. Of those 223 commercial directed limited access permit holders, 29, or 13 percent of permit holders, landed large coastal sharks (LCS) and 22, or 10 percent of permit holders, landed small coastal sharks (SCS) in the Atlantic. In the Gulf of Mexico region, 13, or 6 percent of permit holders, landed LCS in the western sub-region; 8, or 4 percent of the permit holders, landed LCS in the eastern sub-region; and 5, or 2 percent of permit holders, landed SCS throughout the region. Of directed limited access permit holders, 45, or 20 percent, landed pelagic sharks. Of the 142 open-access smoothhound shark permit holders, 75, or 53 percent of permit holders, landed sharks in the Atlantic region. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered would review and modify the percent landings threshold that prompts a shark

fishery closure, and the length of time between public notice and the effective date of a given fishery closure with the goal of avoiding under- and overharvests in these fisheries.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and fishery management measures. These include the Magnuson-Stevens Act, the Atlantic Tunas Convention Act (ATCA), the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c)(1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

NMFS examined each of these categories of alternatives. Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS does not know of any performance or design standards that would satisfy the objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Alternative 1a, the No Action alternative, would maintain the existing 80-percent threshold to close the shark fishery and maintain current shark quotas. Based on the 2016 ex-vessel prices, the potential annual gross revenues for the 13 active directed permit holders from blacktip, aggregated LCS, and hammerhead shark meat in the western Gulf of Mexico sub-region would be \$433,308, while revenue from shark fins would be \$229,723. Thus, potential total average annual gross revenues by each active directed permit holder for blacktip, aggregated LCS, and hammerhead shark landings in the western Gulf of Mexico sub-region would be \$51,002 (\$33,331+ \$17,671). The potential annual gross revenues for the 8 active directed permit holders from blacktip, aggregated LCS, and hammerhead shark meat in the eastern Gulf of Mexico sub-region would be

\$169,206, while revenue from shark fins would be \$88,058. Thus, potential total average annual gross revenues by each active directed permit holder for blacktip, aggregated LCS, and hammerhead shark landings in the Gulf of Mexico region would be \$32,158 (\$21,151 + \$11,007). The potential annual gross revenues for the 5 active directed permit holders for non-blacknose SCS and smoothhound in the Gulf of Mexico would be \$89,909, while revenue from shark fins would be \$55,450. Thus, potential total average annual gross revenues by each active directed permit holder for non-blacknose SCS in the Gulf of Mexico would be \$29,072 (\$17,982 + \$11,090). Since there have been no landings of smoothhound sharks in the Gulf of Mexico, the annual gross revenue for the active directed permit holders would be zero. The potential annual gross revenues for the 29 active directed permit holders from aggregated LCS and hammerhead shark meat in the Atlantic would be \$317,016, while revenue from shark fins would be \$64,968. Thus, potential total average annual gross revenues by each active directed permit holder for aggregated LCS and hammerhead shark in the Atlantic would be \$13,172 (\$10,932 + \$2,240). The potential annual gross revenues for the 22 active directed permit holders from non-blacknose SCS and blacknose shark meat in the Atlantic would be \$317,016, while revenue from shark fins would be \$64,968. Thus, potential total average annual gross revenues by each active directed permit holder for non-blacknose SCS and blacknose shark in the Atlantic would be \$22,548 (\$20,337 + \$2,211). The potential annual gross revenues for the 75 active directed permit holders from smoothhound shark meat in the Atlantic would be \$1,985,794, while revenue from shark fins would be \$182,058. Thus, potential total average annual gross revenues by each active directed

permit holder for smoothhound shark in the Atlantic would be \$28,905 (\$26,477 + \$2,427). The potential annual gross revenues for the 45 active directed permit holders from pelagic sharks (blue, porbeagle, shortfin mako and thresher sharks) meat would be \$2,113,982, while revenue from shark fins would be \$162,530. Thus, potential total average annual gross revenues by each active directed permit holder for pelagic sharks would be \$50,589 (\$46,977 + \$3,612). Alternative 1a would likely result in neutral direct short- and long-term socioeconomic impacts because shark fishermen would continue to operate under current conditions, with shark fishermen continuing to fish at similar rates. The No Action alternative could also have neutral indirect impacts to those supporting the commercial shark fisheries, since the retention limits, and thus current fishing efforts, would not change under this alternative.

Under Alternative 1b, NMFS would change the shark fishery-closure threshold to 90 percent of the available overall, regional, and/or sub-regional quota. This alternative is likely to have neutral direct and indirect short- and long-term socioeconomic impacts because the base quotas would not change for any of the management groups and fishermen would still be limited in the total amount of sharks that could be harvested. This alternative could potentially lead to minor beneficial direct economic impacts if fishermen can land available quota that may have remained unharvested under the current 80-percent threshold. For example, in 2016, the quota for the aggregate LCS and blacktip management groups from the western Gulf of Mexico sub-region was underutilized by 241,579 lbs dw or 32 percent of the adjusted annual base quota, valued at \$201,087 in potential ex-vessel revenue. Assuming all of this unharvested quota were

caught, based on the 13 vessels that landed LCS in the western Gulf of Mexico sub-region, the individual vessel impact would be an approximate gain of \$15,468 per year. This does not include incidental permit holders, who would receive a smaller amount per year. In the Atlantic, the blacknose shark management group was underutilized by 8,022 lbs dw or 23 percent of the quota, valued at \$8,270 in potential ex-vessel revenue. Based on the 22 vessels that landed blacknose and non-blacknose SCS in the Atlantic region, the individual vessel impact would be an approximate gain of \$276 per year. This does not include incidental permit holders, which would receive a smaller amount per year. Alternative 1b could also lead to minor adverse socioeconomic impacts in the short-term if the quotas are overharvested, which would lead to lower quotas the following year. In addition, this alternative could potentially lead to minor adverse socioeconomic impacts if there is a large increase of landings combined with late dealer reporting, after the fishery is closed, that resulted in overharvest. For instance, the current 80-percent threshold has not been effective at closing in time to prevent overharvest of shark species that have small quotas, such as porbeagle sharks. As such, changing the percent closure threshold to 90 percent might be detrimental to the porbeagle shark fishery, as it may not provide sufficient buffer to prevent overharvest and fishery closures that occurred in 2013 and 2015. However, this negative impact would be only in the short-term as NMFS has the ability to monitor quotas on a weekly basis and promptly close the shark fishery.

Under Alternative 1c, NMFS would change the shark fishery-closure threshold to 70 percent of the available overall, regional, and/or sub-regional quota. This change would potentially leave a larger buffer for fishermen to complete trips and receive

delayed dealer reports. It is likely the change in threshold to 70 percent would have neutral direct and indirect short- and long-term socioeconomic impacts since none of the commercial quotas are being changed and NMFS is not expecting an increase in effort or fishing. This alternative could potentially have minor adverse direct socioeconomic impacts if there is a large amount of underharvest remaining every year, after accounting for late dealer reports, that fishermen would no longer be able to harvest as compared to the No Action alternative. For instance, a 10-percent decrease in realized revenue for the western Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark fisheries would equate to an approximate \$66,303 (10 percent of \$433,308 + \$229,273) loss in ex-vessel revenue. Based on the 13 vessels that landed LCS in the western Gulf of Mexico sub-region, the individual vessel impact would be an approximate loss of \$5,100 per year. This does not include incidental permit holders, which would receive a smaller amount per year. However, these would only be short-term losses because NMFS has achieved close to full quota utilization in recent years for some shark quotas.

Under Alternative 1d, NMFS would change the shark fishery-closure threshold to 90 percent in the Atlantic Region, while maintaining the Gulf of Mexico closure threshold and overall non-regional threshold at 80 percent. Alternative 1d provides some flexibility in assigning different closure thresholds between the Atlantic and Gulf of Mexico regions. In the Atlantic region, this alternative could potentially lead to minor beneficial direct economic impacts if fishermen can land available quota that may have remained unharvested under the current 80-percent threshold. For instance, a 10-percent increase in realized revenue for the Atlantic aggregated LCS and hammerhead shark

fisheries would equate to an approximate \$38,198 (10 percent of \$317,016 + \$64,968) gain in ex-vessel revenue. Based on the 29 vessels that landed LCS in the Atlantic region, the individual vessel impact would be an approximate increase of \$1,317 per year. This does not include incidental permit holders, which would receive a smaller amount per year. In the Gulf of Mexico region and for fisheries with no region, this alternative could likely result in neutral direct and indirect, short- and long-term socioeconomic impacts because shark fishermen would continue to operate under current conditions, with shark fishermen continuing to fish at similar rates. Impacts in the Gulf of Mexico would therefore be the same as those described in Alternative 1a.

Under Alternative 1e, when any shark fishery species and/or management group landings reach or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, NMFS would evaluate the criteria before determining if a closure is needed at the 80-percent threshold. This alternative would add additional flexibility to close a fishery depending on a set of criteria, helping to maximize management efficacy while preventing overharvest. If this increased flexibility in determining when to close a fishery leads to full quota utilization of management groups, while still preventing overharvest of shark fisheries, then fishermen could potentially see additional revenue from being able to land sharks that would otherwise have remained unharvested under the existing 80-percent threshold. For instance, a 20-percent increase in realized revenue for the Atlantic aggregated LCS and hammerhead shark fisheries would equate to an approximate \$76,397 (20 percent of \$317,016 + \$64,968) gain in ex-vessel revenue. Based on the 29 vessels that landed LCS in the Atlantic region, the

individual vessel impact would be an approximate increase of \$2,634 per year. This does not include incidental permit holders, who would receive a smaller amount per year. Based upon these criteria, the fishery could still operate similarly to the status quo 80-percent closure threshold, which would result in neutral socioeconomic impacts as described for Alternative 1a, the status quo alternative. As examples, if a shark species/management group quota reaches 80 percent by September 1, then NMFS would evaluate the criteria in Alternative 1e before determining if a closure is needed at the 80-percent threshold in the Gulf of Mexico and Atlantic regions. Based on criteria A (stock status of the relevant species or management group and any linked species and/or management groups) and C (continued landings after the Federal closure), NMFS would likely close the shark species/management group quota in the Gulf of Mexico. In the Atlantic region, NMFS would likely also close the shark species/management group quota based on criteria A since all of the shark species/management groups in the region have an overfished or unknown stock status. This would lead to neutral socioeconomic impacts in both regions since there would be no change from current regulations. If a shark species/management group quota reaches 80 percent by December 1, then NMFS would need to evaluate all of the criteria closely before implementing a closure in either the Gulf of Mexico or Atlantic region. A key criterion to evaluate is the likelihood of landings exceeding the quota by December 31 of each year (Criteria E). In the Gulf of Mexico region, NMFS would also consider Criteria C (continued landings after the Federal closure) and how this would impact the fishery. In the Atlantic region, NMFS

would likely keep the fishery open as long as landings are not projected to exceed the quota by the end of the year.

Under Alternative 1f, the preferred alternative, NMFS would maintain the 80-percent closure threshold but allow a shark fishery to remain open after the fishery's landings have reached or are projected to reach 80 percent as long as landings are not projected to reach 100 percent before the end of the fishing season. This alternative, similar to Alternatives 1d and 1e, would provide the flexibility of achieving full quota utilization while still preventing overharvest. This alternative could therefore lead to neutral socioeconomic impacts, similar to Alternative 1a, the status quo alternative, if the landings are projected to reach 100 percent before the end of the fishing season. As examples, if a shark species/management group landings reach 80 percent by September 1, then NMFS would likely have to close the fishery if it was in either the Gulf of Mexico or Atlantic regions because the landings would likely reach 100 percent before the end of the fishing season. This would cause neutral socioeconomic impacts since it would be the status quo for the fishery. If a shark species/management group landings reach 80 percent by December 1, then NMFS would project whether the landings in the Gulf of Mexico and Atlantic regions would reach 100 percent before the end of the fishing season. If the landings would not reach 100 percent before the end of the fishing season, then NMFS would keep the fishery open. Thus, this could lead to minor beneficial socioeconomic impacts because the quota could be fully utilized.

Under Alternative 2a, NMFS would maintain the status quo and would not change the notice period of five days for the closure of a management group. This alternative

would have no impact on the allowable level of fishing pressure, catch rates, or distribution of fishing effort. As such, it is likely that the No Action Alternative as well as this alternative in combination with any of the Alternatives 1b, 1c, 1d, 1e, or 1f would have both neutral direct and indirect, short- and long-term socioeconomic impacts. If there is a large amount of landings made during the five-day notice and a later closure under Alternatives 1b, 1c, or 1d, then there could be the potential for minor beneficial socioeconomic impacts for those fisheries who have underutilized the quota in recent years. The majority of fishing trips for sharks are currently one day in length, so a five-day closure notice should not result in regulatory discards for these trips. However, this alternative could potentially result in interrupted fishing activities, potentially resulting in regulatory discards if trips were underway at the time of the notice of the closure. For instance, pelagic longline fishing vessels, which can take trips that last several weeks, may need to discard any dead sharks onboard and in their hold if the vessel is unable to land the sharks before the closure is effective. However, NMFS expects few dead discards as a result of closure notices given that NMFS has implemented several management measures that prohibit retention of some sharks (*i.e.*, silky, oceanic whitetip, hammerhead sharks) on vessels with pelagic longline gear onboard. These management changes have made pelagic longline fishermen unlikely to land many sharks in recent years. In combination with all other alternatives (*i.e.*, 1a, 1c, 1d, 1e, and 1f), except Alternative 1b, this alternative would allow fishermen to complete their fishing trips while still preventing overharvest. In combination with Alternative 1b (*e.g.*, 90-percent

closure threshold), there is a risk of overharvest if the landings rate was high before the closure date is effective and potential reduced quotas the following season.

Under Alternative 2b, the preferred alternative, NMFS would change the minimum notice period to three days instead of the current five-day notice once the fisheries reached a landings threshold necessitating a closure. This change would allow more timely action in closing shark fisheries, helping to prevent overharvest. In combination with all other Alternatives (1a, 1b, 1d, 1e, and 1f), except Alternative 1c, this alternative would reduce the risk of exceeding the quota, especially if the landings rate was high before the closure date is effective. In combination with Alternative 1c (*e.g.*, 70-percent closure threshold), this alternative would increase the risk of a significant underharvest and would cause minor adverse socioeconomic impacts. This alternative would have no impact on the allowable level of fishing pressure, catch rates, or distribution of fishing effort, as the commercial quotas would remain the same. Therefore, it is likely that this alternative would have both neutral direct and indirect, short- and long-term socioeconomic impacts. Because this alternative increases flexibility to close the fishery as needed while still preventing overharvest and allowing sufficient time for fishermen to complete trips underway at the time of the notice of the closure, NMFS prefers this alternative at this time. This alternative could potentially result in interrupted fishing activities for pelagic longline vessels, which generally take trips longer than nine days, potentially resulting in regulatory discards if trips were underway at the time of the closure. However, NMFS expects few dead discards as a result of the closure notice timing as most pelagic longline fishermen do not target sharks

and are unlikely to land many sharks given recent management measures to reduce shark mortality on pelagic longline vessels. In addition, the preferred time before the closure is effective is well within the range of the current directed shark trip lengths (*i.e.*, 1-2 days).

Under Alternative 2c, NMFS would change the timing of shark fishery species and/or management group closures to allow immediate closure upon filing of the closure notice with the *Federal Register*. This action would allow timely action in closing shark fisheries, helping to prevent overharvest. In combination with all other alternatives, this alternative would either reduce the risk of exceeding the quota (*i.e.*, Alternatives 1a, 1b, 1d, 1e, and 1f) or increase the risk of a significant underharvest (*i.e.*, Alternative 1c). Therefore, it is likely that this alternative would have both neutral direct and indirect, short- and long-term economic impacts. However, as described above, this alternative could potentially result in interrupted fishing activities with little or no warning to the regulated community, potentially resulting in regulatory discards, if trips were underway at the time of the notice of the closure, with associated loss of revenue. Additionally, HMS AP members from several states indicated that some states would have difficulty closing state water fisheries immediately.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,
Reporting and recordkeeping requirements, Treaties.

Dated: February 16, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be
amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.24, revise paragraph (a)(8)(iii) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(8) * * *

(iii) Estimated date of fishery closure based on when the landings are projected to
reach 80 percent of the quota given the realized catch rates and whether they are
projected to reach 100 percent before the end of the fishing season;

* * * * *

3. In § 635.28, revise paragraphs (b)(2) and (b)(3) to read as follows:

§ 635.28 Fishery closures.

* * * * *

(b) * * *

(2) *Non-linked quotas.* If the overall, regional, and/or sub-regional quota of a species or management group is not linked to another species or management group and that overall, regional, and/or sub-regional quota is available as specified by a publication in the *Federal Register*, then that overall, regional, and/or sub-regional commercial fishery for the shark species or management group will open as specified in §635.27(b). When NMFS calculates that the overall, regional, and/or sub-regional landings for a shark species and/or management group, as specified in §635.27(b)(1), has reached or is projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and is projected to reach 100 percent of the relevant quota by the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a notice of an overall, regional, and/or sub-regional closure, as applicable, for that shark species and/or shark management group that will be effective no fewer than 3 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the *Federal Register*, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fisheries for that shark species or management group are closed, even across fishing years.

(3) *Linked quotas.* As specified in paragraph (b)(4) of this section, the overall,

regional, and/or sub-regional quotas of some shark species and/or management groups are linked to the overall, regional, and/or sub-regional quotas of other shark species and/or management groups. For each pair of linked species and/or management groups, if the overall, regional, and/or sub-regional quota specified in §635.27(b)(1) is available for both of the linked species and/or management groups as specified by a publication in the *Federal Register*, then the overall, regional, and/or sub-regional commercial fishery for both of the linked species and/or management groups will open as specified in §635.27(b)(1). When NMFS calculates that the overall, regional, and/or sub-regional landings for any species and/or management group of a linked group have reached or are projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and are projected to reach 100 percent of the relevant quota before the end of the fishing season, NMFS will file for publication with the Office of the *Federal Register* a notice of an overall, regional, and/or sub-regional closure for all of the species and/or management groups in that linked group that will be effective no fewer than 3 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the *Federal Register*, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fishery for all species and/or management groups in that linked group is closed, even across fishing years.

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[FR Doc. 2018-03688 Filed: 2/22/2018 8:45 am; Publication Date: 2/23/2018]